

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5370 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KANBI BHUDARBHAI SOMABHAI

Versus

COLLECTOR, BANASKANTHA & ORS.

Appearance:

MS KUSUM M SHAH for Petitioner
MR HL JANI for Respondent No. 1
SERVED for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 05/05/97

C.A.V. JUDGEMENT

1. Heard learned counsel for the parties. The facts leading to this petition are that one Ladha was holder of Inami Pasaita Chakariyat land bearing Survey Nos. 7, 92, 130, 264, 265, 518 and 519. On death of Shri Ladha, the lands aforesaid were entered in the revenue record in the name of his sons and heirs Shri Kashiram Ladha, Harjivan Ladha and Dharamchand Ladha on condition of their

rendering services.

2. On coming into force of Bombay Merged Territories

Miscellaneous Abolition Act, 1955, Inams were abolished and Survey Nos. 264, 265, 7, 10 and 130 were regranted to its holders Shri Kashiram, Harjivan and Dharamchand sons of late Ladha on certain conditions. The lands of Survey Nos. 264 and 265 admeasuring 8 acres 31 gunthas, and 7 acres 02 gunthas respectively were in cultivation of the father of the petitioner namely, Soma Laxman for years. The father of the petitioner expired on 25th January, 1979, and thereafter, the petitioner was cultivating the said lands. The revenue record shows the cultivation of the aforesaid lands by the petitioner. On 28-10-80, the aforesaid lands were mortgaged to the petitioner on payment of Rs.2000/-. Under two separate registered sale deeds dated 31st July, 1982, the aforesaid lands were sold to the petitioner for consideration. The petitioner continued to be in possession and cultivation of the said lands. The Deputy Collector, Palanpur, vide its notice dated 30th July, 1983, called upon the petitioner and the vendors to show cause why the land in dispute should not be forfeited to the State for breach of condition of the grant. In response to the show-cause notice, the petitioner and one Keshavlal appeared before the said authority. The petitioner has given out the defence that the suit land was the Pasaita Chakariyat land, was regranted and he was not knowing that it cannot be sold without the permission of the Collector. He submitted further that he is cultivating the suit land since years and has spent Rs.10,000/- towards its improvement and development. The prayer has been made for regularisation of the sale on payment of premium to the State Government, as may be ordered. However, the Deputy Collector, Palanpur under its order dated 30th August, 1983, declined to regularise the sale of the land in dispute on the ground that under the current resolution of the State Government, there is no provision for the regularisation of the sale and ordered to forfeit the suit lands to the State and to dispose of the same as per rules. The petitioner felt aggrieved of the aforesaid order of the Deputy Collector, Palanpur, and has taken up the matter in appeal before the Collector, Banaskantha, which appeal came to be dismissed under the order dated 24th February, 1984. The matter was carried on by the petitioner to the State Government by filing the revision application, but that too has also been without any result in his favour. Hence, this Special Civil Application.

3. The counsel for the petitioner contended that the

reliance which has been placed by the revisional authority to the Government resolution dated 16th March, 1982 is of little consequence because the State Government has not considered its own resolutions dated 11th June, 1968, 5th August, 1968 and 13th July, 1983. The resolution of the Government dated 11th June, 1968 and 5th August, 1968 have not been superseded. These two resolutions relate to the regularisation of the sale of the Pasaita land.

4. The counsel for the respondent, Shri H.L. Jani does not dispute this fact, but his contention is that the petitioner is at fault as those resolutions have not been placed for the consideration of any of the authorities including the revisional authority.

5. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. The resolutions on which strong reliance has been placed by the counsel for the petitioner before this Court in support of her contention that the land in dispute could have been regularised by the respondent were not placed for the consideration by the petitioner before any of the authorities including the revisional authority. So this contention that these resolutions were not considered by the revisional authority is devoid of any substance. If any fault lies then it lies with the petitioner. The petitioner should have placed these resolutions for the consideration of the authorities and in case, thereafter the same have not been considered then it can be said to be an error committed by the authorities, which is not the case here. But at the same time, these are the Government resolutions and have been produced for the perusal of this Court. Though in the order of the revisional authority, there may not be any error, but nevertheless these are the Government resolutions and in case it gives any right to the petitioner for regularisation of the sale made by the holder of the land in his favour, then due consideration has to be given by the competent authority.

6. So the interest of justice will be met in case the matter is remanded back to the revisional authority, the respondent No.3 herein, to decide the revision application of petitioner on merits. It is the duty of the petitioner to place for the perusal of the revisional authority all the three resolutions on which the reliance has been placed by the counsel for the petitioner in this Special Civil Application. Till the revision application is decided by the revisional authority, the interim relief granted in favour of the petitioner by this court

shall continue. It is an old matter and it is expected of the revisional authority to dispose of the same within reasonable time, say within six months from the date of receipt of certified copy of this order. The petitioner is directed to present before the revisional authority along with the certified copy of this order on 1st July, 1997. This Special Civil Application and Rule stand disposed of in the aforesaid terms with no order as to costs.

zgs/-